REMARKS

Claims 15 and 30 are canceled, and therefore claims 16 to 19, 21 to 29, and 31 to 33 are currently pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Claims 28, 30 to 33, 15 to 19, and 27 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. In particular, the Office action asserts that "there is no indication on how the counter has been generated."

As an initial matter, claims 15 and 30 have been canceled without prejudice and their features included in independent claim 28, thereby rendering moot their rejection.

Further, if upon review of a claim in its entirety, the examiner concludes that a rejection under 35 U.S.C. 112, ¶ 2 is appropriate, an analysis as to why the phrase(s) used in the claim are "vague and indefinite" should be included in the Office action. *M.P.E.P.* § 2173.02. The Office Action has not included any such analysis. Instead, the Office Action asserts that "there is no indication on how the counter has been generated," which is completely unrelated to whether the phrases or terms of the claim are vague and indefinite. In this regard, it is further noted that the claims recite the invention. Their purpose is not to explain how the invention works. That role is left to the specification. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1558 (Fed. Cir. 1983). Since claim 24 is clear and gives rise to no ambiguity, it therefore satisfies the requirements of 112, ¶ 2.

Notwithstanding the above, the specification clearly describes how to practice the subject matter of claim 28, e.g., at page 5, lines 8 to 17.

In view of the foregoing, it is respectfully submitted that claims 28, 31 to 33, 16 to 19, and 27 are allowable. Withdrawal of the indefiniteness rejection is therefore respectfully requested.

Claims 28, 15 to 19, 27, 32, and 33 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Publication No. 2002/0063796 to Min ("the Min reference") in view of U.S. Publication No. 2002/0052975 to Yamamoto et al., ("the Yamamoto reference").

In response, independent claim 28 has been amended. Claim 28 relates to a method for generating a counter in a receiving device for digital data streams. As amended, it includes the feature *wherein the determining the sampling frequency of the one of the data streams in the receiving device is without the transmitter transmitting a value of the system*

time clock. It is respectfully submitted that the Min reference or the Yamamoto reference, by itself or in combination, does not disclose – nor is it asserted to disclose – the above identified feature.

Accordingly, claim 28, as well as its dependent claims16 to 19, 27, 32, and 33 are allowable.

Claims 29 and 21 to 26 were rejected under 35 U.S.C. § 103(a) as unpatentable over the Min reference in view of U.S. Patent No. 6,363,207 to Duruoz ("the Duruoz reference").

In response, independent claim 29 has been amended. Claim 29, as amended, includes the feature *wherein the determining the sampling frequency of the one of the packetized elementary data streams is without a transmitter transmitting a value of the system time clock.* It is respectfully submitted that the Min reference or the Duruoz reference, by itself or in combination, does not disclose – nor is it asserted to disclose – the above identified feature. For at least this reason, claim 29 is allowable.

Further, claim 29 relates to a receiving device and provides for "a unit for correctly **determining a sampling frequency** of one of the packetized elementary data streams." It is respectfully submitted that the Min reference does not disclose or suggest this feature. Instead, the Min reference refers only to the inclusion of time information with the transmitted packetized elementary data streams. Any review of paragraph [0006] of the Min reference, (cited by the Office Action as assertedly disclosing this feature,) and any other section of the entire Min reference, makes plain that determining a sampling frequency, as provided in the context of claim 29, is not disclosed or suggested in the Min reference. The secondary Duruoz reference does not cure – and is not asserted to cure – this critical deficiency.

Accordingly, the combination of the Min and Duruoz references does not disclose or suggest all of the features of claim 29, so that the combination of the Min and Duruoz references does not render unpatentable claim 29 or any of its dependent claims 21 to 26.

As further regards dependent claim 21, it provides that "the synchronization unit sets an increment of the counter, the increment being determined from a **ratio** between a program clock reference and a nominal sampling frequency." The Office Action concedes that Min does not disclose this feature. However, the Office Action asserts that "it is

extremely well known in the art that in order to reach a higher number from a lower number, the ratio of the higher number to the lower number can be obtained ...." (*Office Action*, page 8.) It is respectfully submitted that the issue is not whether higher numbers can be obtained from lower numbers; rather, it is whether one skilled in the art would find it obvious to use a ratio between a program clock reference and a nominal sampling frequency *to determine the increment of a counter*, instead of simply basing the increment on an obtained (or determined) system time clock of the transmitter (which does not require any ratios). In this regard, it is respectfully submitted that obviousness rejections without documentary evidence "should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration." *MPEP* § 2144.03(A).

Accordingly, claim 29, as well as its dependent claims 21 to 26 are allowable

Withdrawal of this obviousness rejection of claims 29 and 21 to 26 is therefore respectfully requested.

Claims 28, 30, and 31 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,097,776 to Mesiwala ("the Mesiwala reference") in view of U.S. Patent No. 7,027,773 to McMillin ("the McMillin reference"). The rejection should be withdrawn for at least the following reasons.

As an initial matter, as noted above, claim 30 has been canceled and its features included in claim 28, thereby rendering moot the rejection of claim 30.

Further, claim 28, as amended, includes in relevant part, the following features:

> ...
> generating the digital data streams in a transmitting device by ***sampling analog signals*** at a sampling frequency ***synchronized by a system time clock in the transmitting device***;
> ...
> setting an increment of the counter; and
> ***determining the increment from a ratio between a program clock reference and the sampling frequency***, wherein
> the determining the sampling frequency of the one of the data streams in the receiving device is ***without the transmitter transmitting a value of the system time clock***; and
> the ***frequency of the system time clock in the transmitting device is not the same as the sampling frequency***.

It is respectfully submitted that the Mesiwala reference or the McMillin reference, by itself or in combination, does not disclose the above identified features. For example, any review of the Mesiwala reference makes plain that *determining the increment of the counter from a ratio between a program clock reference and the sampling frequency*, as provided in the context of the claimed subject matter, is not discussed at all. The secondary McMillin reference does not cure – and is not asserted to cure – this critical deficiency. For at least this reason, claim 28 is allowable.

Further, the Mesiwala reference or the McMillin reference, by itself or in combination, does not disclose – and is not asserted to disclose – the feature where the *frequency of the system time clock in the transmitting device* ***is not the same*** *as the sampling frequency.* For this additional reason, claim 28 is allowable.

Still further, the Office Action concedes that the Mesiwala reference does not disclose the feature of *generating the digital data streams in a transmitting device by* ***sampling analog signals*** *at a* ***sampling frequency synchronized by a system time clock*** *in the transmitting device.* However, the Office Action relies on the McMillin reference for the necessary disclosure.

Although the Office Action alleges that col. 11, lines 5 to 22 of the McMillin reference teaches the above-recited claimed feature, the cited section does not support the Office Action's contention; instead it merely discusses a "self-clocking" coding wherein "an accurate oscillator … need not be used." Accordingly, sampling analog signals at a sampling frequency synchronized by a system time clock in the transmitting device, let alone the sampling frequency being different from the system time clock, as provided in the context of the claimed subject matter, is not discussed at all. For this additional reason, claim 28 is allowable.

For all of the foregoing reasons, the combination of the Mesiwala reference and the McMillin reference does not disclose or suggest all of the features of claim 28. Accordingly, claim 28, as well as its dependent claim 31, are allowable.

Withdrawal of this obviousness rejection for claims 28 and 31 is therefore respectfully requested.

Accordingly, all of pending claims 16 to 19, 21 to 29, and 31 to 33 are in condition for immediate allowance.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner

provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Conclusion

In view of the foregoing, it is respectfully submitted that all of pending claims 16 to 19, 21 to 29, and 31 to 33 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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